

## SERVICEMEMBER CIVIL RELIEF ACT

What happens if you are on Active Duty, or you're a Reservist/Guard member called to Active Duty, but you still have matters to attend to back home? What if you're overseas and can't make your credit card or mortgage payments? What if you have issues outstanding in a civil court?

The recently enacted Servicemember's Civil Relief Act (SCRA) expands and improves the former Soldiers' and Sailors' Civil Relief Act (SSCRA). The SCRA provides a wide range of protections for individuals entering, called to active duty in the military, or deployed servicemembers. It is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty and relieve stress on the family members of those deployed servicemembers. A few examples of such obligations you may be protected against are:

- outstanding credit card debt
- mortgage payments
- pending trials
- taxes
- terminations of lease.

In addition the new law:

- Expands current law that protects servicemembers and their families from eviction from housing while on active duty due to nonpayment of rents that are \$1,200 per month or less. Under the new provisions this protection would be significantly updated to meet today's higher cost of living – covering housing leases up to \$2,400 per month – and then be adjusted annually to account for inflation.
- Provides a servicemember who receives permanent change of station orders or who is deployed to a new location for 90 days or more the right to terminate a housing lease.
- Clarifies and restates existing law that limits to 6 percent interest on credit obligations incurred prior to military service or activation, including credit card debt, for active duty servicemembers. The SCRA unambiguously states that no interest above 6 percent can accrue for credit obligations (*that were established prior to active duty or activation*) while on active duty, nor can that excess interest become due once the servicemember leaves active duty – instead that portion above 6 percent is permanently forgiven. Furthermore, the monthly payment must be reduced by the amount of interest saved during the covered period.

**NOTE:** This law only covers debt incurred prior to military service.

- Updates life insurance protections provided to activated Guard and reserve members by increasing from \$10,000 to \$250,000 the maximum policy coverage that the federal government will protect from default for nonpayment while on active duty.

- Prevents servicemembers from a form of double taxation that can occur when they have a spouse who works and is taxed in a state other than the state in which they maintain their permanent legal residence. SCRA will prevent states from using the income earned by a servicemember in determining the spouse's tax rate when they do not maintain their permanent legal residence in that state

## Termination of Pre-Service Lease Agreements

A service member who is leasing/renting property used for dwelling, professional, business, agricultural or similar purposes may terminate a lease that was 1) signed before the service member entered active duty and 2) the lease/rented premises have been occupied for the above purposes by the service member or his/her dependents.

The service member must deliver written notice of termination to the landlord after entry on active duty or receipt of orders for active duty. The termination date for a month-to-month lease/rental is 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example, if rent is due on the 1st of the month and notice is delivered to the landlord on August 5th, the next rent due is September 1st. Therefore, the lease/rental agreement will terminate on October 1st.

For all other lease/rental agreements, the termination date will be the last day of the month after the month in which the notice was given. For example, if the term of the lease/rental agreement is yearly and notice was given August 5th, then the termination date will be September 30th.

If the rent has been paid in advance, then the landlord must return any unearned portion. The landlord may not withhold the refund of a service member's security deposit for early termination of the lease/rental agreement. However, the landlord may withhold return of the security deposit for damages, repairs, and other lawful provisions of the lease/rental agreement.

It's important to understand that, under the SSCRA, a lease can only be terminated if entered into before one goes onto active duty. The SSCRA has no provisions for terminating leases entered into after entry on active duty. Several (not all) states have laws which allow military members to break their leases in the event they must move due to military orders. In those states which do not have such laws, it is important that the active duty member ensure his/her lease contains a "military clause," which allows the member to terminate the lease in the event he/she must move due to military orders. Most bases require servicemembers to have leases approved by the local military housing office. One of the reasons for this is to ensure that the lease contains a "military clause."

## Evictions from leased housing

A service member may seek protection from eviction under SSCRA. The rented/leased property must be occupied by the service member or his/her dependents for the purpose of housing, and the rent can not exceed \$1,200. The service member or dependent who has received notice of an eviction must submit a request to the court for protection under the SSCRA. If the court finds

that the service member's military duties have materially affected his ability to pay his rent timely, the judge may order a stay, postponement, of the eviction proceeding for up to 3 months or make any other "just" order.

## **6% Interest Rate**

If a service member's military obligation has affected his/her ability to pay on financial obligations such as credit cards, loans, mortgages, etc., the service member can have his/her interest rate capped at 6% for the duration of the service member's military obligation.

Qualifying debts are debts that were incurred prior to the service member coming on active duty. The service member must be on active duty at the time of the request, and the service member's military career must have materially affected the service member's ability to pay on the debt. This provision does not apply to federally guaranteed student loans.

The service member should contact his/her creditor (in writing) and request that his/her interest rate be reduced to 6% according to the provisions of the SSCRA. While not actually required by the law, it's a good idea to include a copy of the military orders placing the member on active duty, as part of the request. The burden is on the creditor to seek relief in court if the creditor believes that the service member's military career does not materially affect his/her ability to pay.

## **Court Proceedings**

A service member who is either the plaintiff or the defendant in a civil lawsuit may request a stay, postponement, of a court proceeding in which he/she is a party. A service member may request a stay at any point in the proceedings. However, courts are reluctant to grant stays at the pretrial phase of a lawsuit, such as discovery, depositions, etc. If a judgment is entered against a service member who is unavailable due to military orders, the service member may be able to have that judgment voided.

In order to apply for these protections the service member must actually be a party to the suit.

The provision only applies to civil lawsuits, suits for paternity, child custody suits, and bankruptcy debtor/creditor meetings.

The provision does not apply to:

- administrative hearings
- criminal proceedings
- child support determination (administrative proceedings)
- proceedings in which the service member is merely a material witness to the lawsuit, but not an actual party or
- service member has leave available and has made no attempt to use his/her leave to attend the proceedings

A service member should have his/her commander write a letter to the court and the opposing party's attorney stating that the service member is unable to attend the proceedings.

The member should not have an attorney draft such a letter to the court. A letter by an attorney could be considered an appearance by the service member and could subject the service member to the jurisdiction of the court.

## **Installment Contracts and Auto Leases**

A service member or spouse may request protection under the SSCRA for pre-service debts incurred under installment contracts and auto leases. The service member or the spouse must prove that the service member's military obligations have materially affected his/her ability to pay on the debts. Also, at least one deposit or installment payment must have been made on the contract before entry on active duty. If the contract falls under the protection of the SSCRA, the creditor is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.

## **Enforcement of Obligations, Liabilities, Taxes**

A service member or dependent may, at any time during his/her military service, or within 6 months thereafter, apply to a court for relief of any obligation or liability incurred by the service member or dependent prior to active duty or in respect to any tax or assessment whether falling during or prior to the service member's active military service. The court may grant stays of enforcement during which time no fine or penalty can accrue.

## **Reemployment Rights**

Contrary to what many people believe, there are no provisions for Reemployment Rights as part of the Soldiers and Sailors Civil Relief Act. Reemployment rights are a completely separate legislation, the The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).